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ROBERT DEBERARDINE
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK, IL 60064-6008

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OFFICE OF PETITIONS

In re Application of :
G. Grady McBride, et al. :
Application No. 09/684,628 : **ON PETITION**
Filed: October 6, 2000 :
Attorney Docket No. 5259-04700 :

This is a decision on the petition, filed July 20, 2007, to revive the above-identified application under 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to an Office action mailed August 23, 2005. A Notice of Abandonment was mailed on June 19, 2007. On July 20, 2007, the present petition was filed wherein petitioner indicates that a timely response was filed on December 20, 2005. Petitioner explains that a constructive request for an extension of time was filed on June 16, 2005.

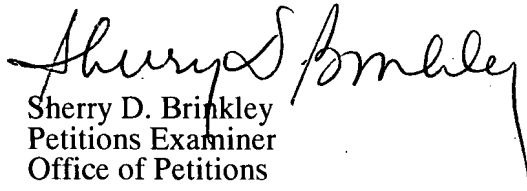
A review of the record confirms that a response was filed on December 20, 2005. However, the "constructive request for extension of time" filed June 16, 2005 does not contain the necessary language to charge any *future* extension fees required to a deposit account. Specifically, the "constructive request for extension of time" states that "[t]he Commissioner is hereby authorized to charge any additional filing fees required under 37 CFR §1.16, as well as any patent application processing fees under 37 CFR §1.17 *associated with this communication* for which full payment had not been tendered, to Deposit Account No..." Emphasis added. Since a petition for extension of time and fee were not included with the response filed December 20, 2005, the response is considered untimely. Consequently, the present petition under 37 CFR 1.137(b) is necessary and the associated petition fee will not be waived.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of \$1,500; and (3) an adequate statement of unintentional delay¹.

¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The application is being referred to Technology Center AU 3731 for appropriate action by the Examiner in the normal course of business on the reply received July 20, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions